

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on February 12, 2001
at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Rick Dale, Vice Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Rod Bitney (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Douglas Mood (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)
Rep. David Wanzenried (D)

Members Excused: None.

Members Absent: None.

Staff Present: Robyn Lund, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 459, 2/7/2001; HB 473,
2/7/2001

HEARING ON HB 459

Sponsor: Representative Doug Mood, HD 58

Proponents: Todd O'Hair, Martz Administration
Rita Windhom, Lincoln County Board of Commissioners
Tim Ryan, Larex
Cory Farmer, student
Paul Buckley, Golden Sunlight Mine
Joe Gauthier, student
Ed Eggleston, Kootenai Forest Congress
Marty Johnson, Golden Sunlight Mine
Jack Mann
Kim Lyles
Don Serba, Pulp Paper Workers Resource Council
Michael Kakuk, Montana Contractors Association
David Bozher, student
Pat Heffernan, Montana Logging Association
Scott Mendenhall, Jefferson Local Development Corporation
Karl Schwiezer, Kalispell Chamber of Commerce
Julie Martin, mother
Roger Halver, Montana Association of Realtors
Chuck Samuelson
John Bloomquist, Montana Stock Growers Association,
Montana Water Resource Association
Gary Marx
Lorna Karn, Montana Farm Bureau
Ellen Engstedt, Montana Wood Products Association
Frank Crowley, Asarco
Bruce Benson, League of Rural Voters
Steve Flynn, Louisiana Pacific
Margaret Morgan, Montana Petroleum Marketers
Webb Brown, Montana Chamber of Commerce
Pat Keim, Burlington Northern Santa Fe
Byron Roberts, Montana Building Industry Association
Mike Collins, Independent Montana Miners
Russ Ritter, Montana Resources

Opponents: Jim Jensen, Montana Environmental Information Center
Arlene Boyd, Northern Plains Resource Council
Steve Gilbert
Janet Ellis, Montana Audubon
John Wilson, Montana Trout Unlimited
Bill LaCroy
Joanne Bernard, farmer

Steve Kelley, Friends of the Wild Swan
David Dittloff, Montana Wildlife Federation
Tracy Stone-Manning, Clark Fork Coalition
Stan Frasier, Montana Conservation Voters
Sherm Jenky
Art Goldman, tax payers study group
Joe Getkowski, Montana River Action
Bob Ream, Montana Democratic Party
George Ochenski, Confederated Salish and Kootenai
Tribes
Paul Hawks, Cottonwood Resource Council
Mark Fix

Opening Statement by Sponsor:

Representative Doug Mood, HD 58, read from MEPA.

EXHIBIT (nah35a01) He stated that these are noble words and a wonderful sentiment. He handed out a sign up sheet from when MEPA was heard in 1971. **EXHIBIT (nah35a02)** It represents a wide variety of people supporting the original house bill. There were no opponents. He read some of their testimony. "Montana's productive age populous is leaving the state for employment in other states." If we want to keep tax payers in the state, the passage of the original bill was needed. "A major conservation challenge today is to achieve needed development and use of our natural resources while concurrently protecting and enhancing the quality of our environment." In the original hearing MEPA was referred to as the middle ground. However, something went wrong because in a short span of time people were fighting about what MEPA really meant. In 1977 there was discussion about whether MEPA was a substantive law. He read from a letter from Tom Judge that said that MEPA needed further definition and that the courts of Montana should not have that responsibility. Rep. Mood submitted an editorial article. **EXHIBIT (nah35a03)**

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 14.1}

Todd O'Hair, Martz Administration, supports meaningful, common sense reform measures to the Montana Environmental Policy Act. He is a true conservationist, born and raised on a ranch. He learned that the actions you take today have impacts, both negative and positive, on future actions. The survivability of future generations depends on careful stewardship of the land today. Man can coexist with nature. The Martz administration will not support legislation that could lead to the degradation of our environment. The legislation proposed is common sense

efforts to make a process work more efficiently, timely and predictably. MEPA is a policy; there are no substantive laws contained in MEPA. MEPA was originally intended for a process for the public to provide input and judge the potential consequences of an action, before that action took place. It is a look-before-you-leap procedure. The intent of MEPA won't change with this legislation, it may streamline the process. There is increasing litigation with MEPA. We need to move away from the analysis paralysis that the state has fallen victim to. Passage of this bill will not bring a rash of polluted streams or LA-type air. Passage of this bill will help provide a business environment that current and potential businesses can manage.

Rita Windhom, Lincoln County Board of Commissioners, read from the bill, page 2, lines 13 and 14. It looks at the social and economic impacts of the projects noncompletion. In Lincoln county, over 53% of the residents live below 200% of poverty, 25% live below 100% of poverty. This is because the people are deprived of the opportunity to work because they are not considered in the process. A sense of hopelessness permeates the communities in the county. They are capable people, but they are not considered. With this sense of hopelessness a number of things happen in the community. There is a rise in domestic abuse. It is reflected in the children. The children leave never to return again. The juvenile court system is spending \$800,000 per year. The school system is having to close a grade school because the children are leaving. They are fast becoming a welfare county. This bill could make a difference.

Tim Ryan, Larex, said that his company is looking into building a plant in Montana. This bill would allow them to create jobs in Montana. These jobs are not minimum wage jobs. These jobs would employ Montanans at \$16 per hour or more, plus benefits. These are what Montana needs to keep from exporting our young people.

Cory Farmer, student, is attending MSU in Bozeman. In order for him to stay in Montana and support a family there will have to be a change in the laws to help turn the economy around. He hopes that these bills will pass and help the economy in the state.

Paul Buckley, Golden Sunlight Mine, stated that current regulatory requirements imposed on industry in Montana have more to do with the legal interpretation of laws and statutes and less to do with actual environmental impacts. It has a negative impact on the economic well-being of the citizens of Montana. Since the Golden Sunlight Mine opened they have paid more than \$205 million in wages and benefits. They have paid \$270 million in supplies and services. This money is then put back into the community as the workers spend that money. While the economy of

Montana is falling down and breaking up, Montana Resources employees are out of work, as well as the Asarco workers and other. We have got to rebuild Montana and this bill will help.

Joe Gauthier, student, said that people in Montana need goals and opportunities. He wants to be able to raise a family in Montana, but fears that he won't find a good paying job. This bill may help that.

Ed Eggleston, Kootenai Forest Congress, watched his organization crumble because they didn't have clear objectives in the law. This bill would help to define some of those objectives. We need to all work for jobs and the environment. It is time to start working together. The people in Lincoln County are good people and worthy of consideration.

Marty Johnson, Golden Sunlight Mine, said that when he graduated from highschool in 1971, good jobs were easier to find. Life then was stable, consistent and good. Some of our kids will never know a life like that. In Montana farming, ranching, logging and mining are all suffering. They have been under attack for many years now. This is not okay. Opportunities for workers have slipped away year by year. It is time to do something about the mess we are in. We are losing jobs daily. We no longer choose where we want to live, but rather live where we have to to work. We can change this. He wants his kids to know a secure life, to have a job, and to experience Montana as he did. We need to turn this around for all the kids in Montana.

Jack Mann, 74 years old, said that this change won't affect him, but it will affect the young people in Montana. MEPA is broken. There is massive evidence of the economic problems in the state. We need to think about the young people who depend on these industries.

Kim Lyles urged support of this bill. MEPA has become a cash cow for environmental lawyers and an economic disaster for business in the state of Montana. He has two grown children who are looking at leaving the state so that they can earn a living. He has two more children at home that he is hoping will have the opportunity to stay in Montana. This will simply make things more streamlined and more viable, and it will make the state much more business friendly. We need to encourage business so that we can encourage a healthy economy.

Don Serba, Pulp Paper Workers Resource Council, emphasized that MEPA is a procedural statute. It establishes a process for analyzing potential environmental consequences of proposed activities. It has no substantive standards to protect the

environment. Making any changes to MEPA does not weaken any environmental law. Violating MEPA does not translate into environmental degradation. This bill will improve the process that state agencies use in applying substantive environmental laws. This bill makes the law more predictable and more workable.

Michael Kakuk, Montana Contractors Association, supports this bill.

David Bozher, student, would like to have a job in Montana when he is done with school. The people behind this bill are the ones trying to give him that opportunity. He asked the committee to look at the positive economic impacts of this bill.

Pat Heffernan, Montana Logging Association, pointed out that an analysis would be required of the no action alternative. This is a very important part of this bill.

Scott Mendenhall, Jefferson Local Development Corporation, said that we need an effective way to go after the natural resources. In Jefferson county, the mines that they have provide much greater economic benefit than anything else.

Karl Schwiezer, Kalispell Chamber of Commerce, supports this bill.

Julie Martin, mother, has a family owned logging business. She would like to see her sons be able to go into the business with their father. The way things are going that will not be possible.

Roger Halver, Montana Association of Realtors, supports this bill.

Chuck Samuelson echoed previous testimony. It seems that there are endless court battles over MEPA and the decisions are made by the judges.

John Bloomquist, Montana Stock Growers Association, Montana Water Resource Association, registered the support of his organizations. This provides for some direction and definitions.

Gary Marx stated that we need to streamline some of the regulations that we have before us.

Lorna Karn, Montana Farm Bureau, supports this bill.

Ellen Engstedt, Montana Wood Products Association, submitted written testimony. **EXHIBIT(nah35a04)** **EXHIBIT(nah35a05)**

Frank Crowley, Asarco, submitted written testimony.
EXHIBIT(nah35a06)

Bruce Benson, League of Rural Voters, stands in support of this bill. He submitted a petition of others who support this bill.
EXHIBIT(nah35a07)

Steve Flynn, Louisiana Pacific, supports this bill.

Margaret Morgan, Montana Petroleum Marketers, supports this bill.

Webb Brown, Montana Chamber of Commerce, supports this bill.

Pat Keim, Burlington Northern Santa Fe, supports HB 459.

Byron Roberts, Montana Building Industry Association, supports this bill.

Russ Ritter, Montana Resources, stands in support of this bill.

Mike Collins, Independent Montana Miners, supports HB 459.

Opponents' Testimony:

{Tape : 1; Side : B; Approx. Time Counter : 0}

Jim Jensen, Montana Environmental Information Center, said that it is the substance of this bill that concerns him. The details in this bill can not hold up to the sunlight. This bill says the least responsible developers will have the lowest requirements. Those with the highest income will have different and higher standards to meet. The basis of any alternatives is the economic feasibility to the developer, not the protective nature in terms of the effect on the community, the environment or the economy. He thinks there is a constitutional problem with that language and that it creates a problem with equal protection. He is also concerned about the term "due weight." There is no definition in law for that term. That is confusing and will be problematic. The tax payers are imposed a substantial burden in this legislation. It seems that this bill would need a fiscal note, although it doesn't have one. He does support changes in the way MEPA documents currently dismiss no action alternatives, but what was talked about here today reflects a misunderstanding about what a no action alternative is.

Arlene Boyd, Northern Plains Resource Council, submitted written testimony. **EXHIBIT(nah35a08)**

Steve Gilbert submitted written testimony. **EXHIBIT(nah35a09)**

Janet Ellis, Montana Audubon, submitted written testimony.
EXHIBIT(nah35a10)

John Wilson, Montana Trout Unlimited, submitted written testimony. **EXHIBIT(nah35a11)**

Bill LaCroy said that he is an environmentalist. He knows these issues pretty well. He agrees that statements of philosophy make horrible law. MEPA is not broken. There is not requirement to demonstrate what economic feasibility is as per whether an entity can request that it not be applied to them. If MEPA is not retained you are going to get sued. Environmentalists are not frivolous people, they work hard.

Joanne Bernard, farmer, is opposed to this attempt to weaken MEPA. The majority of jobs that have been lost in Montana have been lost because of the global economic system. The companies are going to places that have no environmental protection at all. In 1970, when MEPA was brought about, the world was a different place. The population is growing and the need for resources is going to be outrageous. The companies are going to go to the places that are easiest to strip the land for the resources that they need. We are in denial if we don't think that this will happen down the road. We need to protect Montana. The environment is not the reason for the downturn in the economy.

Steve Kelley, Friends of the Wild Swan, recommends that if it isn't broken, don't fix it. He showed a map of the Swan River State Valley. It shows that there is a problem with logging and clear-cutting. There is no substantive law in Montana that governs logging. We need to protect fish. Statements of philosophy make bad law, let's get some substantive law in this state. Let's not burden MEPA with the entire weight of the decision making of 5 or 6 agencies that made 17,365 MEPA actions in the past 10 years. There were only 14 lawsuits. The wave of litigation does not exist.

David Dittloff, Montana Wildlife Federation, said that MEPA is a look-before-you-leap bill. It provides information for agency decision makers before they actually make the action. It is a way for the public to get involved in decisions affecting our natural resources. He is concerned about this subverting those two main intents.

Tracy Stone-Manning, Clark Fork Coalition, opposes this bill.

Stan Frasier, Montana Conservation Voters, submitted written testimony. **EXHIBIT (nah35a12)**

Sherm Jenky is opposed to this bill.

Art Goldman, tax payers study group, wonders who will pay the bill after the environment is depleted.

Joe Getkowski, Montana River Action, is opposed to this bill.

Bob Ream, Montana Democratic Party, supports MEPA, but is in opposition to this bill.

George Ochenski, Confederated Salish and Kootenai Tribes, submitted written testimony. **EXHIBIT (nah35a13)**

Paul Hawks, Cottonwood Resource Council, is opposed to this bill.

Mark Fix submitted written testimony. **EXHIBIT (nah35a25)**

Questions from Committee Members and Responses:

{Tape : 1; Side : B; Approx. Time Counter : 36.6}

REPRESENTATIVE CHRISTOPHER HARRIS asked a question of Mr. O'Hair. He had described this bill as adding no substantive procedures to MEPA, but why is the provision that says that, if the project sponsor can't afford it, it is not a reasonable alternative, not considered substantive. **Mr. O'Hair** said that his testimony was referring to environmental laws. There are no substantive environmental laws in MEPA. **REP. HARRIS** asked if he would agree that this puts a cap on expenditures that could be made for a project alternative. **Mr. O'Hair** said that was correct. **REP. HARRIS** asked if he would regard that as a substantive provision rather than a procedural provision. **Mr. O'Hair** said that could be. He stresses that there are no substantive environmental laws contained in MEPA.

REPRESENTATIVE DEE BROWN asked, of the sponsor, how does he reply to the people from the Montana Wildlife Federation talking about the public's inability to respond through the changes in the process of MEPA. **REP. MOOD** replied said that there is nothing that is eliminated in the scoping process or any of the other processes that are currently involved in gathering the information for an EIS or to get through the environmental analysis. This bill gives the project sponsor some input into

the alternatives. **REP. DEE** asked for the sponsor to address the line that says that it must be economically feasible for the project sponsor. **REP. MOOD** said that MEPA is a procedural law. There is a difference with the procedural laws that we are dealing with and the substantive laws which we are using to try to establish protection for the environment.

REP. BROWN asked a question of Steve Kelley. He had spoken of past logging, how many large projects have gone on in the Swan Valley in the last five years. **Mr. Kelley** replied that it is perpetual. None of the projects had bypassed MEPA that he knew of. There had been some salvage logging that is not held to the same standards.

REPRESENTATIVE RICK LAIBLE asked a question of Mr. Jensen. In looking at this bill, most of the bill seems to address itself to having the sponsor be involved, do you, Mr. Jensen, want the sponsor to be involved at all? **Mr. Jensen** said that the sponsor has every right of participation that anyone else has. Today the developers have input, what they don't have is veto power for anything that they don't want to afford. That is what this bill gives them. **REP. JENSEN** doesn't see that. The agency will consult with the sponsor to decide what is economically feasible. **Mr. Jensen** said that is wrong. It ought to be that way. The developers have all the rights and opportunities already.

REPRESENTATIVE RICK DALE asked Mr. Jensen if he could conceive of where it would be productive, but not economically feasible. **Mr. Jensen** said that he could. **REP. DALE** asked how he saw a company being able to pursue something that the agencies wouldn't approve. **Mr. Jensen** said that this bill prevents the agencies from requiring what the companies wouldn't be able to do. Therefore the permit would not have that requirement in it and they would not have to forgo to project because of the permit. **REP. DALE** thought that the project sponsor would still be required to meet air quality standards, water quality standards, reclamation requirements and the other parts of the substantive laws that are required in major projects. **Mr. Jensen** said that they would not be because of this change to the law. This makes MEPA substantive. **REP. DALE** asked if that is a legal opinion. **Mr. Jensen** said that it is based on court decisions made under the Metal Mines Reclamation Act.

REP. DALE asked Mr. Kakuk a question. How does he see this section resulting in the outcome that Mr. Jensen thinks will happen? **Mr. Kakuk** said that he disagrees with Mr. Jensen. It is his legal opinion that this provision would not overrule substantive law. If reclamation law requires bonding at a certain level, that law will take precedence over whatever MEPA

says. **REP. DALE** clarified that MEPA is the broad umbrella that ties the substantive laws together and the standards in those substantive laws are still the ones that apply. **Mr. Kakuk** said that in his opinion MEPA requires a hard look so that the state, the public and the project sponsor understands the potential impact to the environment.

REP. HARRIS asked a question of Mr. Ryan. He testified that he thought that this bill streamlined the MEPA process, could he explain that? **Mr. Ryan** had testified to the aspect of the bill that requires looking into economic benefits as well as environmental detriments. **REP. HARRIS** asked if he would agree that this would require greater analysis than the current MEPA law. **Mr. Ryan** couldn't comment on that.

REPRESENTATIVE GAIL GUTSCHE asked a question of John North. How would an agency go about getting access to a company's financial statement to determine whether or not they can afford to proceed with a project? **Mr. North** said that they would request the applicant's financial information, some of which they would claim confidentiality of, and they would then do an analysis of the information given. They would probably need to hire some outside consulting expertise to do that. **REP. GUTSCH** asked if that expertise would be an additional cost to the department. **Mr. North** said that potentially could be passed onto the project applicant, but it probably would be an additional expense to the department. **REP GUTSCHE** asked if he agreed that this bill should have fiscal note. **Mr. North** wasn't sure what the rules were for obtaining a fiscal note. **REP. GUTSCHE** asked if he agreed that there would be additional cost to the department. **Mr. North** said that they were faced somewhat with this situation when they analyzed the Golden Sunlight application and, in that case, they did hire an outside consultant.

REP. GUTSCHE asked the same question of the sponsor. **REP. MOOD** wasn't sure why there is not a fiscal note and he will request one. If it is done under an EIS, they would charge the project sponsor for it. **REP. GUTSCHE** asked, under this bill, who would determine what information would be required or if the information is adequate. **REP. MOOD** replied that the project sponsor would provide financial information to the department and based on that information they would determine whether or not the project sponsor has adequate resources to comply with the required substantive laws.

REP. GUTSCHE asked Janet Ellis if she agreed with the statement that there are no substantive laws in MEPA. **Ms. Ellis** said that the Environmental Council has revealed that MEPA has been

declared substantive under three statutes because of court cases.

REPRESENTATIVE RON ERICKSON asked a question of Mr. O'Hair. Looking at alternatives adds time to the project, should we extend the time allowed for the EIS? **Mr. O'Hair** thinks that the intent of the bill is to make sure that all of the alternatives are considered and all of the ramifications are considered. Although it may be more difficult, it is felt that the current time line is adequate. **REP. ERICKSON** asked if it would require a special session of the appropriate board, and would that board make a reasoned decision over time? **Mr. O'Hair** said that they would hope that they review the information and it would depend on the time frames that they are talking about as to whether they would have to call a special session or not. It will also depend on the board.

REP. ERICKSON asked the same questions of the sponsor. **REP. MOOD** said that if it adds time to the process it will be at the request of the project sponsor and he would understand that the delay is his responsibility. **REP. ERICKSON** asked if he is willing to go ahead and put into the law an extension for the time for the EIS because it is the project sponsor who has required it. **REP. MOOD** said that there is nothing in the framework of the bill that talks about time frames. **REP. ERICKSON** again asked if **REP. MOOD** would be willing to put that into the law. **REP. MOOD** said that he would.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 22.2}

REP. MOOD showed the committee a couple of reports that were very large books. MEPA was enacted in response to a book called "Silent Spring." It had to do with the indiscriminate use of DDT throughout the environment by the federal government. We need policies in place to protect us from that kind of use of a product or activity. They needed information. MEPA was the last act that was instituted as a result of the industrial revolution. We are now in the information age, we are in a different world than we were in 1971. MEPA is a process, a procedural act to see if the permit that is being asked for is going to comply with the substantive laws. It is not an end in itself, it is a process by which we get to the end and the end is to protect water and air quality. What the legislature does is look at laws and modernize them. Why should we not modernize MEPA? It is time to make MEPA workable.

HEARING ON HB 473

Sponsor: Representative Cindy Younkin, HD 28

Proponents: Ted Hoffman, H & F Logging Inc.
Cary Hegreberg, Montana Wood Products Association
Ed Regan, RY Timber Corporation
Tim Ryan Larex
Rita Windom, Lincoln County Commissioners
Dave Skinner
Don Serba, Pulp and Paper Workers Resource Council
Kim Lyles, PPWRC
Gail Abercrombie, Montana Petroleum Association
Donna Thorton, logging contractor
Ed Eggleston
John Bloomquist, Montana Stock Growers Association,
Montana Water Resource Association
John Youngberg, Montana Farm Bureau
Roger Halver, Montana Association of Realtors
Frank Crowley, Asarco
Steve Flynn, Louisiana Pacific
Patrick Heffernan, Montana Logging Association
Don Allen, Western Environmental Trade Association
Mike Collins, Independent Montana Miners

Opponents: John Wilson, Montana Trout Unlimited
Bob Stevens
Tracy Stone-Manning
Hal Harper
Jim Jensen, Montana Environmental Information Center
Janet Ellis, Montana Audubon
Paul Hawks, NPRC, Cottonwood Resource Council
Toby Day
Paul Edwards
Sherm Jenki
Steve Kelley, Friends of the Wild Swan
David Dittloff, Montana Wildlife Federation
Stan Frasier, Montana Conservation Voters
Joe Gutkoski, Montana River Action
George Ochenski, Confederated Salish and Kootenai
Tribes
Hope Stevens

Opening Statement by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 30.6}

REPRESENTATIVE CINDY YOUNKIN, HD 28, said that this bill will clarify that MEPA is a procedural act and not a substantive act. It comes down to the question of whether MEPA should dictate a result or a process. This is not a technical bill and it doesn't have a hidden agenda. It is just a matter of policy as to what this legislative body will make. We are the policy makers in government, not the agencies. MEPA was enacted in 1971 as a look-before-you-leap act. It was patterned after the national environmental policy act, which the United States Supreme Court has determined is a procedural statute. MEPA requires that we need to determine the environmental impact before it happens. Nowhere in the pages of MEPA does it say, "Thou shalt not pollute." It says, "Thou shalt not pollute in our air quality act and in our water quality act." We are not changing those at all. MEPA doesn't set any standard for water or air quality, nor does it say anything about whether mining or reclamation should be conducted and, if so, how and to what extent. Whether MEPA is substantive or procedural has not been discussed in the legislature for 18 years. If it is substantive, then MEPA itself dictates an agency's decision and it forces a particular action. If MEPA is procedural, then MEPA itself doesn't dictate a certain result, rather it is an information process, which is what was intended when it was originally passed. As long as the decision maker is fully informed, the decision maker can then make an appropriate decision under the specific circumstances and under the air quality act or the water quality act or the mining reclamation act, et cetera. There are all kinds of laws that are substantive and say, "Thou shalt not pollute." If there are other aspects of our environment that need specific protection, then we need to specifically protect them with a substantive law rather than relying on a procedural law to fill in the gaps. It's not fair to those areas of the environment, which may need protection, to rely upon a procedural act for protection. Having an agency relying on MEPA to provide the substantive environmental protection usurps the policy making power of this legislative body and doesn't adequately protect that which may need protection. We need to make sure that we have our MEPA laws in balance with the constitutional provisions of both the clean and healthful environment and the right to pursue a living in this state. We need to coexist in productive harmony with the environment.

Proponents' Testimony:

{Tape : 2; Side : A; Approx. Time Counter : 38.5}

Ted Hoffmann, H & F Logging Inc., wanted to explain the consequences a contractor incurs by shutting down timber sales once operations have started. In November of 1998, they were

approached by a timber company to harvest a portion of a timber sale. After two on-site inspections they negotiated a contract. They had arranged housing for the crew. They began falling trees on December 18th. After 100,000 feet had been felled, they had arranged to bring in the trucks. On December 23rd they received a call saying that an injunction had been placed on the sale and all harvesting activities had to cease. As a result they lost \$5,000 or more, in addition to lost time. It could have put them out of business. The logs are just laying on the ground rotting.

Cary Hegreberg, Montana Wood Products Association, said that MEPA has hurt people. He echoed the previous testimony. The EQC operates on a consensus basis, that means that everybody has to agree before a recommendation is made. The EQC can't reconcile some of the issues contained in MEPA. What it amounts to is that you either like the open-ended and subjective language of MEPA or you don't. His critics like it because they can use it to stop timber sales and activities. After 30 years there have only been 27 lawsuits around MEPA. What is the threshold of significance? At what point do we recognize it as a problem? The original vote in the House was 99 to 1. He doesn't think that those 99 people in 1971 would have supported the bill if they would have seen the resulting litigation that has stopped people from working.

Ed Regan, RY Timber Corporation, submitted written testimony.
EXHIBIT (nah35a14)

Tim Ryan, Larex, stated that this bill does not change current environmental laws. It identifies the issues and improves efficiency. The efficiency that this bill allows will allow companies, in advance, to know how long they will have to be tied up in the permitting process.

Leo Berry, Burlington Northern Santa Fe Railroad, said that he helped draft the first set of rules to help implement MEPA. He struggled with what exactly MEPA was because there are no parameters or guidelines to it. It is good to clarify that it is procedural because to find otherwise would constitute an unauthorized delegation of authority to a state agency. The EIS helps in the planning process, but there is no legal impact to the statement. There is no substantive law telling the agencies what to do with the EIS. If the law were to be placed as substantive, it would place too much authority with the executive branch agencies. MEPA provides no guidelines as to what an agency is to do with the EIS.

Rita Windom, Lincoln County Commissioners, said that we need to listen to REP. YOUNKIN; she said it well.

Dave Skinner said that what this bill amounts to is when the green flag drops the BS stops. What he likes about this bill is the fact that it tells the agency that they better not be changing the rules.

Don Serba, Pulp and Paper Resource Council, concurred with Mr. Hegreberg's testimony. This act doesn't work for everybody.

Kim Lyles, Pulp and Paper Workers Resource Council, reminded the committee that what they do affects thousands of lives across Montana. We have the opportunity to fix things and make this a more business friendly climate.

Gail Abercrombie, Montana Petroleum Association, said that we are here to try to make MEPA last another 30 or more years. This makes it sensible. It keeps an agency from holding an operator hostage. This will put some responsibility on the legislature to make laws for the agencies to follow.

Donna Thorton, logging contractor, said that she is going to be the last generation of her family to stay in the timber industry, even though they have their own logging company and three teenage sons. They aren't able to work enough months of the year to provide meaningful employment for anyone, including their family. There are mills closing all over northwestern Montana. We have a state that is so rich in natural resources and we have mills closing all over the place. Anything that the legislature can do to turn the economy around needs to be done now. We don't have a lot of time left.

Ed Eggleston said that MEPA is a good law. Part of what makes it a good law is the fact that it can be changed to make it better. This bill will do this.

John Bloomquist, Montana Stock Growers Association, Montana Water Resource Association, said that this bill cuts at one of the key issues of MEPA: Is it substantive or procedural? MEPA is a procedural statute. This bill is good administrative law and good legislative policy and good government.

John Youngberg, Montana Farm Bureau, concurs with Mr. Bloomquist and urges committee support.

Roger Halver, Montana Association of Realtors, supports this legislation.

Frank Crowley, Asarco, showed three volumes of administrative rules of the DEQ. There are enough substantive requirements for those who are trying to operate in the state.

Steve Flynn, Louisiana Pacific, supports this law from a business perspective. You have got to love a bill that gives bureaucrats a time frame.

Patrick Heffernan, Montana Logging Association, wanted to reenforce that real harm has occurred because of a procedural statute. There are more lawsuits to come. They see this bill as being one piece of a puzzle that will affirm our future and provide a strategic safety net so that these well designed and fully environmentally compliant timber sales can go forward without undue influence and interference because of a procedural statute that is fatally flawed.

Don Allen, Western Environmental Trade Association, supports this bill.

Mike Collins, Independent Montana Miners, submitted written testimony. **EXHIBIT (nah35a15)**

Opponents' Testimony:

{Tape : 2; Side : B; Approx. Time Counter : 14.5}

John Wilson, Montana Trout Unlimited, submitted written testimony. **EXHIBIT (nah35a16)**

Bob Stevens submitted written testimony and supplemental information dealing with producing wind power. **EXHIBIT (nah35a17)**
EXHIBIT (nah35a18)

Tracy Stone-Manning, Clark Fork Coalition, said that proponents will say that it costs too much and takes too much time. Often other influences cause the extended time and costs. The biggest problem with this bill is that it says an agency may not condition a permit unless it could show that the issuing of the permit without the conditions would create the likelihood that laws or standards would be broken. There would be countless ramifications of this. An example would be that mines are subject to a permit that includes traffic safety plans. It's not illegal for mines to run trucks through the community whenever they want, but it does make sense for communities to have a say as to when the trucks will go through their town. Under this bill, the MEPA process could no longer incorporate common sense traffic safety plans. It would be a grave mistake to scrap the ability to impose such conditions and simply hope that a company would restrict themselves. She feels that industry representatives are wrong when they say that gutting MEPA will provide more jobs.

Hal Harper said that things look different to the committee than they do to the rest of the public. He fears that what he reads and sees in the media is a blame game going on. In this case it is his belief that the environmental law and conservation laws are being blamed for the economic lows of the state of Montana. If you take your eye off of the real cause of the economic problems in Montana, you are not doing anyone a favor. The recommendations that stand out are the following: This law has saved a lot of litigation; this law has helped agencies make better decisions; find better ways to involve the public. He feels that the public is the one entity that is being forgotten at this point in time. If the committee passes this it allows the blame game to go any further and allows official policy of this legislature to say the reason that our economy is failing is because our environmental laws are too tough. If the committee wants to protect the remaining industrial jobs that we have and further the economy of the state, tackle the real problems and don't be blaming them on our environmental policy standards.

Jim Jensen, Montana Environmental Information Center, stated that in the EIS for Pegasus Gold's Diamond Hill Mine Project are listed some mitigation measures which were taken that don't have other statutory authority, such as fire prevention and control. He also pointed out that there is no air quality standard for asbestos; MEPA would be the only way to protect against that. How many hundreds of people have to die before we accept the value of sound environmental protection laws?

Janet Ellis, Montana Audubon, said that MEPA is substantive in two areas. **EXHIBIT(nah35a19)** All the mitigation that goes with a condition of a sale would be prohibited with this bill. No best management practices would be required if this bill passes. MEPA has been called a look-before-you-leap bill and that is what they want to keep it as.

Paul Hawks, Northern Plains Resource Council, Cottonwood Resource Council, submitted written testimony. **EXHIBIT(nah35a20)**

Toby Day pointed out that this bill doesn't cover noxious weeds. It does in some counties, but it won't in every county. If there is a project in a county where weeds are not controlled by a weed supervisor, then it won't cover them. Only 34 counties have a weed county control mechanism.

Paul Edwards said that there was no real purpose to this bill, except to gut and cripple MEPA. The proponents claim that this will bring on an influx of industrial development that will benefit us all. We have heard this before. This is a fool's bargain. It is appalling that in a state that not so long ago

was a wholly owned subsidiary of the monster snake Anaconda that took and took and left nothing behind but poverty, social dysfunction and the world's biggest, ugliest toxic hole in the ground, that this kind of thinking could rise from its grave to haunt Montana again. **EXHIBIT (nah35a21)**

Sherm Jenki said that he has learned to be cynical by watching the legislature. It is hard for him to believe that these things are done in a vacuum. He offered the following challenge to the committee: If SB 319 passes the Senate and comes to the committee, kill it. If you don't, then you are destroying part of the substance that is in place. Let's not sacrifice southeastern Montana.

Steve Kelly, Friends of the Wild Swan, opposes this bill.

David Dittloff, Montana Wildlife Federation, submitted written testimony. **EXHIBIT (nah35a22)**

Stan Frasier, Montana Conservation Voters, opposes this bill.

Joe Gutkoski, Montana River Action, opposes this bill.

George Ochenski, Confederated Salish and Kootenai Tribes, submitted written testimony. **EXHIBIT (nah35a23)**

Hope Stevens submitted written testimony. **EXHIBIT (nah35a24)**

Questions from Committee Members and Responses:

{Tape : 2; Side : B; Approx. Time Counter : 49.9}

REPRESENTATIVE BOB STORY asked if the tribal lands fall under MEPA. **Mr. Ochenski** said that they did not. However, tribal citizens are citizens of the United States, the state of Montana, as well as tribal members. They are fully capable of participating in MEPA decisions on any land surrounding the reservations.

REPRESENTATIVE DEE BROWN asked Ms. Stone to explain how deregulation has caused thousands to lose their jobs. **Ms. Stone** said that it seems to her that if Montana Resources can't pay its bills because they are too high under deregulation, and therefore has to shut down, those workers are out of a job because of deregulation. **REP. BROWN** asked if Ms. Stone realized that deregulation doesn't take place for another year and a half. **Ms. Stone** said that she stands by her statement. She believes that the cutbacks in industry are a direct result of deregulation.

REPRESENTATIVE DOUG MOOD asked Mr. Berry if he was familiar with the Supreme Court decision of Vermont and Yankee Nuclear Power Corporation v. Natural Resources Defense Council. **Mr. Berry** is familiar with it, but thought that there were others who were better informed.

REP. MOOD asked if Mr. Wilson was familiar with the BMPs that are currently being done in Montana. **Mr. Wilson** is. **REP. MOOD** said that he understood his testimony to be that he thought a forest practices act would be something that is necessary if they pass this bill. **Mr. Wilson** said that was correct. **REP. MOOD** asked if he thought that a forest practices act would do a better job protecting the forest than the BMPs currently have done.

Mr. Wilson said that his point was that in state forest sales the state agency can't set conditions that the BMPs be used.

REP. MOOD asked if the BMPs are voluntary. **Mr. Wilson** said that they are voluntary, but the agency can make them a condition of a timber sale.

REP. MOOD asked **REP. YOUNKIN**, having heard the statement here that there is reference to better ways to involve the public, does the sponsor recall the testimony and the recommendations for better ways to involve the public. **REP. YOUNKIN** said that the first thing she sees is to amend the MEPA statute to clarify the value of public involvement under MEPA. There are six other ways listed to further clarify the value and purpose of public involvement.

REPRESENTATIVE KEITH BALES asked Mr. Wilson about the handout that he had presented. It, in essence, indicates that MEPA keeps things from being sited on private land where there might be archeological sites; where in MEPA does it say that? **Mr. Wilson** replied that he indicated that there was no statutory authority other than MEPA to prevent mitigating siting. **REP. BALES** asked if he would agree that the main controlling factor on that would be who owns the private land rather than anything in MEPA, and if there isn't anything in MEPA, they don't really have a say, do they? **Mr. Wilson** said that the private land owner does dictate what happens to historical sites and archeological sites on their property that have not been designated by the state historical officer. As part of the MEPA process you could have that site designated as a state historical site and then you could mitigate it through MEPA.

REP. BALES asked a question of Mr. Hawks. He was talking about an agreement between the mine and the people there, was that a voluntary agreement by the mine? **Mr. Hawks** said that it was. It was a negotiated agreement and it was legally binding.

REP. BALES clarified that it was not mandated. **Mr. Hawks** said that they were required to have a traffic plan. They took it a step further and put a view on that traffic plan so they knew what it would look like and they agreed to that. **REP. BALES** asked if the same thing could have been done by the local community.

Mr. Hawks said that he would think that in terms of a safety factor it could be. He emphasized that this agreement was done by people from the community.

REPRESENTATIVE JOAN HURDLE said that they have heard that they need to enact this law so that timber projects can go forward and that the MEPA process has stopped a lot of good timber projects. Could Mr. Kelley comment on that? **Mr. Kelley** said that he thinks people are frustrated with certain things and they are blaming the law. There are a lot of things that go into these studies. In his opinion, the DNRC is not the best and brightest agency in preparing environmental documents. Nobody equals DNRC in volume and trying to hide the trick. There is always a trick in there. **REP. HURDLE** couldn't see any signs of any serious delays in the process at all. **Mr. Kelley** doesn't think that delay is a huge problem. The recommendations of the study committee have addressed adequately the time frames. It is not the law causing the problems. There is bad blood among the primary opponents.

REP. HURDLE said that this seems to be a semantic argument. Certainly there are gaps in our substantive laws, if we say that this is procedural, won't that cause a problem? Why are we doing this? **REP. YOUNKIN** said that the EQC has studied this. The recommendation was that the legislature should determine whether it is substantive or procedural. **REP. HURDLE** asked for that citation. **REP. YOUNKIN** said it was on page 173. "The legislature should define whether MEPA is a substantive or procedural law or both." To answer the question of why are we doing this, it is because we haven't done it. This legislative body has never taken its responsibility to specifically define what this law is. **REP. HURDLE** asked if the sponsor was concerned that this would put a stop to a lot of mitigation which has brought about some good things. **REP. YOUNKIN** said that she is not. There is nothing in the bill that says that the agencies can not discuss mitigation. There is nothing that prevents that from happening.

REPRESENTATIVE RON ERICKSON asked the sponsor to look at page 1, lines 20 and 21 of the bill. It says, "All agencies of the state shall identify and develop methods and procedures that will ensure that presently unquantified environmental indemnities and values may be given appropriate consideration in decision making." Is it the sponsor's intention to cross out this line of

the law? **REP. YOUNKIN** said it is not her intention to strike that from the statute. Wiser decisions can only be made with information. This is an information gathering tool so that we can make wise decisions. **REP. ERICKSON** said that on page 3, section 4, it says that there has to be something already in statute before you can impose conditions. Why is it that lines 20 and 21 on page 1 don't counteract this portion? **REP. YOUNKIN** said that if there is something that needs protection then we need to have a substantive law to protect it. We can't decide to protect that based on this process alone. There needs to be an underlying substantive law because if you don't have that you can't provide adequate protection to that resource.

REP. ERICKSON said that until there are those statutes, these two parts of the bill are in conflict. **REP. YOUNKIN** said that some of those things can be covered already in statute under the community impact section of title 90. We should fill those gaps.

REP. ERICKSON asked why not wait until there are no gaps.

REP. YOUNKIN said that we will never discover what all those gaps are. We are an evolving society. In order to provide adequate protection there needs to be a specific substantive law.

REPRESENTATIVE DAVE WANZANREID asked Mr. Harper, if this bill is passed, will it increase the yield off of school trust lands?

Mr. Harper said that there is a target for timber cuts on state land that is set and will be maintained. **REP. WANZANREID** asked, if this bill passes, what gaps does he see that will exist in future timber sales on school trust lands. **Mr. Harper** said that there are a number of gaps that will become more apparent as things go on. If you declare MEPA to be solely procedural, those gaps are immediate. If you do not, those gaps are not immediate.

REPRESENTATIVE GAIL GUTSCHE said that by the testimony that was heard today, it looks like it might tie the hand of DEQ and other agencies. If this bill passes, do you believe that DEQ could no longer condition a permit? **Mr. North** said that is the way that he reads it. In the years that he has been with the agency he is aware of four or five instances where we have imposed conditions based on a substantive MEPA. Those have mainly been in the area of traffic conditions.

Closing by Sponsor:

{Tape : 2; Side : A; Approx. Time Counter : 22.5}

REP. YOUNKIN said that one of the statements we had was about the blame game. This bill is not being given to you as the solution to all of Montana's economic woes. It is not true that this bill will solve all of the economic problems. There are many, many reasons for the economic woes, and she feels that this is one of

those reasons. It's not the reason, but it adds to the problems that they are facing. The community impact laws in title 90 will continue to allow the departments to put conditions on various projects. There aren't as many gaps as you might think. There have only been three cases where MEPA has been applied substantively. We can fill those gaps. She asked the committee to read the chapter six in the green book in regards to the substantive versus procedural issue. There have been many court cases that have said that MEPA is procedural. That is what our courts have found; that is what the Supreme Court has found. All she is asking for is a little clarification so that they can stop asking the question and stop wondering if this is procedural, substantive or both. The governmental process established in MEPA should not be the reason for preventing an industry from conducting its business. We as the policy makers should make it clear that this process should not dictate a particular result. That is why we have our underlying substantive acts. They have not suggested that our air quality act or water quality or any other substantive laws should be weakened. Those are good laws. We are not trying to weaken any environmental laws. All we are trying to do is make a process work better and make sure that the governmental process is not specifically what dictates the outcome. The reason to prevent an action should be because it would degrade our environment beyond repair to the extent that humans and plant life and wildlife and aquatic life can't coexist in productive harmony. We must find a balance between our presence and the use of our natural resources which will permit high standards of living in Montana and allow for a wide sharing of life's amenities.

ADJOURNMENT

Adjournment: 7:10 P.M.

REP. CINDY YOUNKIN, Chairman

ROBYN LUND, Secretary

CY/RL

EXHIBIT (nah35aad)